

1.27(2) Unless there is a written agreement between all parties to the transaction to the contrary, all interest earned on the trust account shall be transferred on a calendar quarter basis to the state, beginning July 1, 1985. The broker may have the depository remit the interest directly, or the broker may remit the interest but, in either case, it will be the responsibility of the broker to see that the interest is remitted. The amount to be remitted to the state will be the amount of interest earned less any service charges directly attributable to the requirement of maintaining an interest-bearing account and of remitting the interest to the state. If the interest is remitted by the broker, the broker shall include with the remittance a copy of the applicable bank statement(s) showing the interest paid and the service charges attributable to maintaining the account. The broker may, but shall not be required to, inform the parties to the transaction of the intended use of the interest.

a. If the property management or rental account is interest-bearing, the interest shall be transferred on a calendar quarter basis to the state unless there is a written agreement paying the interest to the property owner.

b. In no event shall the broker be paid interest earned on moneys held in trust for others by the broker.

1.27(3) A trust account may bear interest to be disbursed to (1) the buyer or sellers involved in a real estate purchase, sale or exchange transaction; or (2) the property owner, if the property management or rental contract contains this specific provision; or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2).

1.27(4) Receipts from property management and rental account transactions may be deposited in a trust account separate from real estate transaction funds. If separately maintained, this account shall not be required to be an interest-bearing account.

a. The broker shall provide to the broker's client a complete accounting of all moneys received and disbursed from the trust account(s) not less often than annually.

b. A broker may only utilize a separate property management or rents trust account for those moneys received by a broker pursuant to a written property management or rental agreement.

1.27(5) A broker shall be required to open and maintain one or more trust accounts if the broker receives or expects to receive trust funds. For each separate trust account opened, the broker shall file with the commission a written "Consent to Examine and Audit Trust Account" form which irrevocably authorizes the commission to examine and audit the trust account. The form of consent shall be prescribed by and available from the commission, and shall include the account names and number, and the name and address of the depository.

a. If the broker does not expect to receive trust funds, the broker shall file an affidavit with the commission on a form prescribed by and available from the commission.

b. If trust funds are received by the broker after filing an affidavit, the broker must immediately open a trust account and file the appropriate consent to examine form with the commission.

c. A consent to examine is not required for a separate farm business operating trust account in the name of the owner or owners and used by either the farm owner or farm manager or agent to conduct business as a part of a farm management agreement.

d. A consent to examine is not required for a separate property management account in the name of the owner or owners and used by either the property owner or property manager or agent to conduct property management as a part of a property management agreement.

1.27(6) Each broker required to maintain a trust account shall maintain at all times a record of each account, as required by these rules, in the place of business, consisting of at least the following:

a. A record called a journal which records in chronological order all receipts and disbursements of moneys in the trust account.

(1) For receipts, the journal for each trust account must include the date, name of depositor, name of principal or identify the property, the check number and the amount deposited.

(2) For disbursements, the journal for each trust account must include the date, name of payee, name of principal or identify the property, the check number and the amount disbursed.

(3) The journal must provide a means for monthly reconciliation on a written worksheet of the general ledger balance with the bank balance and with the individual ledger accounts to ensure agreement.

b. Real estate sales transactions shall additionally require an individual ledger account identified by the property or the principal, which records all receipts and disbursements of the transaction and clearly separates the transaction from all others. The ledger account shall include the date, check number, amount, name of payee or depositor or explanation of activity with a running balance.

c. Property management trust account records shall additionally include an individual ledger account for each tenant, identifying the tenant's rental unit, security deposit, and show all receipts and disbursements together with check number and date. The journal for each account shall be maintained as an owner's ledger account for all properties owned by each owner showing receipts and disbursements applicable to each property managed.

(1) All disbursements must be documented by bids, contracts, invoices or other appropriate written documentation.

(2) The running balance may be determined at the time of monthly reconciliation.

d. Trust account supporting documents shall include, but not be limited to, the following:

(1) Bank statements;

(2) Canceled checks;

(3) Copies of contracts, listing, sales, rental and leasing;

(4) Closing statements;

(5) Pertinent correspondence; and

(6) Any additional items necessary to verify or explain an entry.

1.27(7) No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties, except in accordance with this rule. In the event of a dispute over the return or forfeiture of any earnest money or escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until:

1. The broker is in receipt of a written release from all parties consenting to the disposition of the deposit; or

2. The broker is in receipt of a final judgment of the court directing the disposition of the deposit; or

3. There is a final decision of a binding alternative dispute resolution process; or

4. A civil action is filed by one or more of the parties to determine the disposition of the deposit, at which time the broker may seek court authorization to pay the deposit into court.

a. If, at any time after the accepted offer to purchase, the broker in good faith believes that the parties disputing the return of the deposit will not agree on the disposition of such deposit or file a civil action to determine the disposition of the deposit, then the broker may file an interpleader action pursuant to Iowa Rules of Civil Procedure and pay the deposit into court. The broker may, in filing such an interpleader action:

(1) Attempt to claim a part of the deposit pursuant to the listing contract with the seller, if the seller is successful in the suit.

(2) Disclaim any part of the deposit and request the court to restrain the buyer and the seller from naming the broker in the civil suit and order them to litigate their claims to the deposit.

b. In the absence of a pending civil action or written agreement, it shall not be grounds for disciplinary action where, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known address, setting forth the broker's proposed action and the grounds for the decision.

c. In the absence of a pending civil action or written agreement, it shall not be grounds for a disciplinary action where, upon passage of six months from the date of the dispute, a broker disburses the earnest money deposit to a seller or lessor in a transaction based upon a good faith decision that the buyer or lessee has failed to perform as agreed, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known address, setting forth the broker's proposed action and grounds for the decision.

d. The dispute must be legitimate; if a buyer or a seller, or a lessee or lessor, demands the return of the earnest money deposit, the broker shall consult with the other party who may agree or disagree with the return.

e. The commission will not take disciplinary action against a broker who in good faith disburses trust account moneys pursuant to this rule. Nothing in this rule requires a broker to remove money from the broker's trust account when the disposition of such money is disputed by the parties to the transaction.

f. Property management account funds may be withdrawn at any time for the purpose of returning the funds to the payee in accordance with the terms of the contract or receipt.

g. Property management funds may be withdrawn when and if the broker reasonably believes, from evidence available, that the tenant has obtained a rental through information supplied by or on behalf of the broker.

When an offer is withdrawn or the acceptance is revoked without liability pursuant to Iowa Code chapter 558A, any earnest money deposit shall be promptly returned to the buyer without delay. The seller's consent and agreement to release the funds is not required. A copy of the written revocation or withdrawal shall be retained with the trust account supporting documents.

1.27(8) Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The earnest money must be disposed of as provided in subrule 1.27(7) and the broker shall pursue any claim for commission or compensation against the broker's principal.

1.27(9) In the event all funds being held by the broker for a transaction cannot be disbursed at the time of closing, the broker shall obtain an escrow agreement signed by both parties which shall direct the broker regarding the future disbursement of the funds.

1.27(10) A trust account may bear interest to be disbursed to the buyers or sellers with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account shall be a separate account from the account(s) which is to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed in the management contract and shall be properly accounted for on closing statements. Service charges for the account are a business expense of the broker and shall not be deducted from the proceeds.

1.27(11) Unclaimed trust funds shall be paid to the treasurer of the state of Iowa in accordance with Iowa Code chapter 556 entitled "Disposition of Unclaimed Property."

1.27(12) Broker, broker associate, or salesperson acting as a principal. Where a licensee acts as a principal in the sale, lease, rental or exchange of property owned by the licensee and receives payments, rent, or security deposits from the purchaser, these funds must be deposited into the broker's trust account when the licensee is acting in the capacity of a real estate broker, broker associate or salesperson.

1.27(13) When a broker, broker associate, or salesperson is acting as a principal in the sale, rental, lease, or exchange of property owned by the licensee, the use of the broker's trust account is not required if all of the following exist:

- a. The sale, rental, or exchange is strictly, clearly and totally a "by owner" transaction;
- b. No commission or other compensation is paid to or received by the licensee; and
- c. The licensee does not function as a real estate licensee in any capacity throughout the transaction.

1.27(14) Whenever a licensee is in doubt as to whether activities as a principal require that funds received be deposited into the broker's trust account, the safest course of action is to account for those funds through a broker's trust account.

193E—1.28(543B) Closing transactions. It shall be mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker shall at the same time deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed. The broker shall retain all trust account records and a complete file on each transaction for a period of at least five years after the date of the closing which shall include one copy of the listing, any offers to purchase, all correspondence pertinent to the transaction, and the closing statement. The listing broker shall be responsible for the closing even though the closing may be completed by another licensee. If the closing transaction is handled through an unlicensed escrow agent and the escrow agent renders a closing statement, the listing broker shall ensure that funds which the broker has received or paid as part of the transaction are accounted for properly.

1.28(1) In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction. If the listing broker so elects, the selling broker shall have the purchaser make the earnest money check payable to the listing agent's trust account and shall immediately deliver the earnest money check along with the offer to purchase to the listing agent. The offer to purchase shall designate that the earnest money is to be held in trust by the listing agent. When cash is accepted as earnest money by the selling agent, the selling agent must deposit the money in the selling broker's trust account in accordance with commission rule, and then immediately transfer the earnest money deposit to the listing agent by issuing a check drawn on the selling broker's trust account.

1.28(2) Anything other than cash or an immediately cashable check shall not be accepted as earnest money unless that fact is communicated to the seller prior to the acceptance of the offer to purchase, and is stated in the offer to purchase.

1.28(3) Brokers acting as agents for the buyer in a specific real estate transaction shall have the same requirements for retention of copies as stated in rule 1.28(543B), except a buyer's agent who is not a party to the listing contract is not required to retain a copy of the listing contract or the seller's settlement statement.

193E—1.29(543B) Salesperson shall not handle closing. A salesperson shall not handle the closing of any real estate transaction except under the direct supervision or with the consent of the employing broker.

193E—1.30(543B) Property management. A licensee shall not rent or lease real estate, offer to rent or lease real estate, negotiate or offer or agree to negotiate the rental or leasing of real estate, list or offer to list real estate for the leasing or rental of real estate, assist or direct in the negotiation of any transaction calculated or intended to result in the leasing or rental of real estate or show property to prospective renters or lessees of real estate unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

1.30(1) Every property management agreement or other written authorization between a broker and the owner of real estate shall include, but not be limited to, the following:

- a. Proper identification of the property to be managed.
- b. All terms and conditions under which the property is to be managed, powers and authority given to the broker by the owner.
- c. Terms and conditions that the broker will remit property income to the owner and when the broker will provide periodic written statements of property income and expenses to the owner, which shall be done no less than annually.
- d. Which payments of property-related expenses are to be made by the broker to third parties.
- e. Amount of fee or commission to be paid to the broker and when it will be paid.
- f. Security deposits and prepaid rents will be held by the broker or the owner.
- g. Effective date of the agreement.
- h. Terms and conditions for termination of the property management agreement by the broker or the owner of the property.

- i. Signatures of the broker and owner or authorized agent.

1.30(2) The licensee shall give the owner or the owner's authorized agent a legible copy of every written property management agreement or written authorization at the time the signature of the owner is obtained and the licensee's broker shall retain a copy.

1.30(3) A licensee who is managing the leasing or rental of real estate may act as an agent in the sale or exchange of that real estate only if the property management agreement clearly grants the specific authorization and contains all of the required elements for a listing as set forth in IAC 193E—1.23(543B) Listings, or a separate listing agreement is secured.

1.30(4) The broker shall deposit all funds received on behalf of the owner, by no later than five banking days, into a trust account maintained by the broker, under the broker's control and in compliance with Iowa Code section 543B.46 and IAC 193E—1.27(543B).

1.30(5) If the property management agreement is terminated or transferred for any reason, the property manager:

- a. Shall terminate the management activities of the property as provided in the agreement and except as otherwise provided by the agreement;
- b. Shall notify the owner and any tenants of the property of the termination;
- c. Shall provide the owner, not later than 30 days after the effective date of the termination, with any unobligated funds due to the owner under the agreement and not later than 60 days after the effective date of the termination, provide the owner with a final accounting of the owner's ledger account, the amount of any obligated funds held in the property manager's client trust account under the agreement, a statement of why obligated funds are being held by the property manager and a statement of when and to whom the obligated funds will be disbursed by the property manager;
- d. May disburse any unobligated funds only to the owner, or with the proper written authorization of the owner, to another property manager designated in writing by the owner;

e. Shall immediately notify each tenant that the conditionally refundable deposit will be transferred to the owner or to a new property manager and, at the same time, the name and address of the owner or the new property manager to whom these deposits will be transferred.

1.30(6) If any of the unobligated funds held by the property manager under the terminated agreement represent tenants' conditionally refundable deposits received from current tenants, the property manager:

a. May not expend any tenant's conditionally refundable deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreements, and

b. If any tenant terminates tenancy at the same time as or prior to the termination of the management of the rented or leased property, the licensee shall complete any final accounting, inspection or other procedure required by the tenant's rental or lease agreement, by the Uniform Residential Landlord and Tenant Law, Mobile Home Parks Residential Landlord and Tenant Law, or by the property management agreement, unless the owner directs otherwise in writing.

1.30(7) Financial dealings under a property management agreement shall be conducted subject to the following:

a. A check shall not be issued or presented for payment prior to sufficient funds being in the owner's account to cover the check.

b. Transfers of funds between two or more accounts maintained for the same owner may be made if proper entries are made on the ledgers of the accounts affected and the broker maintains the specific written authorization of the owner.

Transfers of funds between individual owner's accounts must be done by writing billings and receipts debiting and crediting the appropriate accounts. Transfers may not be done by ledger entries alone.

c. The broker shall not withdraw, pay or transfer money from the owner's account in excess of the remaining credit balance at the time of withdrawal, payment or transfer.

d. Management fees must be withdrawn from the owner's account at least once a month unless the agreement provides otherwise. The fees shall be identified by property name or account number for which the fees were earned and withdrawn by the broker and deposited into the broker business operating account. Fees may not be paid directly from the owner's trust account to the broker.

e. Conditionally refundable deposits shall be placed in a trust account until refund is made or until all or a portion of the deposit accrues to the owner under the tenant's agreement.

If refundable deposits are not maintained in a separate trust account, the running balance of the account shall not, at any time, go below the total of the refundable deposits being held in the account.

f. The total of balances of the individual property management accounts of the broker must equal the balance shown on the journal, the account ledgers, and the reconciled bank balance of the broker.

All accounts and records must be in compliance with Iowa Code section 543B.46 and IAC 193E—1.27(543B).

g. Except as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), if refundable deposits and funds are received from others pursuant to a property management agreement, deposited in an interest-bearing trust account, and there is not a separate written agreement to pay the interest earned to the owner or tenant, the interest shall be paid to the state pursuant to Iowa Code section 543B.46. The property manager shall not receive or benefit from the interest.

The written approval agreement shall be signed by each party having an interest in the funds, fully disclosing how the funds are to be handled by the property manager, who will benefit from the interest earnings, how and when interest earnings will be paid and any limitations that may be provided for on the withdrawal of the funds deposited in the interest-bearing trust account.

***193E—1.31(543B) Prohibited practices.** For purposes of this rule only the term “real estate licensee” shall mean “real estate broker or real estate salesperson” as defined in Iowa Code chapter 543B. A licensee participating in any of the practices described in this rule shall be deemed to be engaging in “unethical conduct” and a “practice harmful or detrimental to the public” within the meaning of Iowa Code section 543B.29(3).

1.31(1) An arrangement in which a real estate licensee requires or conditions, in connection with the sale of a lot, that the real estate licensee receive from the homebuilder an exclusive right to sell or list the house to be constructed on the lot.

1.31(2) An arrangement in which a real estate licensee agrees to sell lots on behalf of a developer on the condition that the developer require each homebuilder purchasing such a lot to list the house to be constructed with the real estate licensee.

1.31(3) An arrangement in which a real estate licensee, in connection with the sale of a lot to a consumer or homebuilder, requires the consumer or homebuilder to pay a commission on the value of the house to be constructed on the lot.

1.31(4) Any arrangement pursuant to which the sale of real estate to a prospective purchaser is conditioned upon the listing of real estate owned by the prospective purchaser with the real estate licensee.

1.31(5) An arrangement in which a real estate licensee, in connection with the sale of a lot to a consumer, requires the consumer to use a specified homebuilder to build the house to be constructed on the lot.

1.31(6) Any arrangement in which a real estate licensee enters into an agreement with a mortgage broker, bank, savings and loan, or other financial institution pursuant to which the making of a loan is directly or indirectly conditioned upon payment of a real estate commission to the real estate licensee.

1.31(7) Any arrangement pursuant to which a real estate licensee who is affiliated with a mortgage broker, bank, savings and loan association or other financial institution benefits from the practice by the affiliated financial institution of granting mortgage loans or any other loan or financial services or the availability of other benefits directly or indirectly conditioned upon the use of the real estate services of the affiliated licensee.

This rule is intended only to regulate the licensing of real estate licensees in the state of Iowa. This rule is not intended nor should it be interpreted to supplant Iowa Code chapter 553 (The Iowa Competition Law) or as authorizing or approving business practices which are not specifically prohibited in this rule. The commission, upon receipt of any formal written complaint filed against a licensee alleging a violation of this rule, shall, in addition to evaluating such complaint for license revocation or suspension under Iowa Code chapter 543B, forward a copy of such complaint to the attorney general of the state of Iowa and to the United States Attorney for investigation and appropriate action.

*Effective date (7/29/93) of 1.31(543B) delayed 70 days by the Administrative Rules Review Committee at its meeting held July 8, 1993.

193E—1.32(543B) Suspended and revoked licenses. A suspended or revoked license must be returned to the commission as provided in Iowa Code section 543B.33 and IAC 193E—2.15(543B).

1.32(1) As of the effective date of a suspended or revoked license, the licensee may not engage in any activity which requires a real estate license as defined in Iowa Code chapter 543B.

1.32(2) When a broker, corporation or partnership license is suspended or revoked, all licensees associated with or assigned to that broker, corporation or partnership shall automatically be placed on “inactive” status for the duration of the suspension or revocation, unless transferred to another broker.

a. The suspended or revoked broker shall return, before or immediately upon the effective date of the suspension or revocation, all licenses that are assigned to or associated with them or the firm as provided in Iowa Code section 543B.33 and IAC 193E—2.15(543B).

b. The commission, when a suspension or revocation is determined, shall also determine if the corporation or partnership license shall be automatically placed on inactive status or canceled.

c. If the broker suspended or revoked is also the designated broker of a firm or branch office, that firm or branch office shall automatically be placed on “inactive” status until a new broker is designated.

d. If the suspended or revoked broker is the only licensed officer of a corporation, the corporation license will automatically be placed on inactive status.

1.32(3) A suspended or revoked licensee may only receive compensation during the period of suspension or revocation for those acts performed and for which compensation was earned, when the person was actively licensed prior to the effective date of the suspension or revocation.

This rule does not determine if a licensee is entitled to compensation which would depend upon the written employment or association agreement with the sponsoring broker or a matter of contract law.

1.32(4) All listings and property management agreements must be canceled by the suspended or revoked broker upon receipt of the order and prior to the effective date of the order.

a. The seller or lessor shall be advised that they may enter into a contractual agreement with another broker of their choice.

b. A suspended or revoked broker may not sell or assign listings or management agreements to another broker without the written consent of the owner of the property and everything must be completed prior to the effective date of the order.

1.32(5) A suspended or revoked broker may not finalize any pending closings. This responsibility must be given to another broker, an attorney, financial institution or escrow company.

a. This shall be done with the written approval of all parties to the transaction.

b. All parties shall be advised of the facts concerning the situation and the name, address and telephone number of the responsible entity where all trust and escrow moneys will be held.

1.32(6) A suspended or revoked broker is prohibited from advertising real estate in any manner as a broker. All advertising must be removed or covered, including but not limited to signs, within ten calendar days after the effective date of the suspension or revocation.

The office business telephone must not be answered in any manner to indicate the broker is active in the real estate business.

193E—1.33 Rescinded, effective 11/25/87.

193E—1.34(543B) Loan finder fees. The acceptance of a fee or anything of value by a real estate licensee from a lender or financing company for the referral or steering of a client to the lender for a loan shall be considered not in the best interest of the public and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

193E—1.35(543B) Distribution of executed instruments. Upon execution of any instrument in connection with a real estate transaction, a licensee shall, as soon as practicable, deliver a legible copy of the original instrument to each of the parties thereto. It shall be the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this requirement.

193E—1.36(543B) Definitions. Rescinded IAB 12/20/95, effective 1/24/96.

193E—1.37(543B) Disclosure of agency.

1.37(1) A licensee shall not represent any party or parties to a real estate transaction or otherwise act as a real estate broker or salesperson unless that person makes disclosure to all parties to the transaction identifying which party that person represents in the transaction.

1.37(2) The disclosure required by subrule 1.37(1) must be made by the licensee at the time the licensee provides specific assistance to the client. A change in licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made immediately.

1.37(3) A written agency disclosure must be made by the licensee to all parties to a real estate transaction identifying which party the licensee represents in the transaction prior to an offer being made or accepted by any party to a transaction. The written disclosure shall be acknowledged by separate signatures of all parties to the transaction prior to any offer being made or accepted by any party to a transaction. A change in the licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made and signed by all parties as soon as practical.

1.37(4) The seller may, in the listing agreement, authorize the seller's broker to disburse part of the broker's compensation to other brokers, including a buyer's broker solely representing the buyer. A broker representing a buyer shall inform the listing broker (if there is one) or, if there is no listing broker, the seller, either verbally or in writing, of the agency relationship before any previewing, showing or negotiations are initiated, whichever comes first. The obligation of either the seller or buyer to pay compensation to a broker is not determinative of the agency relationship.

1.37(5) A licensee may not be the agent for both the buyer or tenant and the seller or landlord without obtaining the written consent of both the buyer or tenant and the seller or landlord in compliance with 193E IAC 1.45(543B).

1.37(6) Nothing contained in this rule shall obligate any buyer or tenant, or seller or landlord to pay compensation to a licensee unless the buyer or tenant or seller or landlord has entered into a written agreement with the broker specifying the compensation terms in accordance with Iowa real estate license law and commission rules. Further, nothing shall prohibit a party from entering into a written agreement which contains duties, obligations, and responsibilities which are in addition to those specified in Iowa real estate license law and commission rules.

1.37(7) A licensee may work with a single party in separate transactions pursuant to different relationships including but not limited to selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent, or as an agent or subagent representing the seller, or as dual agent, if the licensee complies with the requirements of Iowa Code chapter 543B and this rule in establishing the relationships for each transaction. If the brokerage has a company policy of disclosed dual agency for in-house transactions, the disclosure of agency relationship shall comply with Iowa law and commission rules including, but not limited to, the requirement to inform the prospective clients that they are not required to consent to dual agency representation as provided by subrule 1.45(2). A general statement in the consent signed by the buyer and seller that the licensee represents both buyer and seller is not sufficient.

1.37(8) An agency relationship disclosure is not required when the licensee is acting solely as a principal and not as an agent for another or when a written communication from the licensee is a solicitation of business.

1.37(9) If the seller, landlord, buyer, or tenant rejects representation, or refuses to sign the agency disclosure document, or refuses to sign acknowledging receipt of the disclosure, the licensee shall note that fact on a copy of the agency disclosure document and obtain other documentation establishing delivery of the disclosure and maintain the written documentation in the transaction file.

1.37(10) If any seller, landlord, buyer, or tenant rejects dual agency, or refuses to sign a consent to dual agency, the broker cannot act as a dual agent. If any seller, landlord, buyer, or tenant who is a client of the broker refuses to sign a consent to appointed agency by that same broker with respect to the other party to the transaction, then the broker and affiliated licensees cannot act as an appointed agent for such other party to the transaction.

1.37(11) A licensee who is offering real estate brokerage services as an auctioneer shall make the written disclosure to the buyer and obtain the acknowledgment of receipt required by law and rules, not later than prior to the buyer entering into a written purchase agreement for the property. For the purposes of this rule, the identification of the successful bidder shall constitute the first meaningful contact with a buyer when specific assistance is provided. After the first meaningful contact, the first practical opportunity to make the required disclosures to the buyer shall depend upon the circumstances. While it is not required, it is recommended that licensees disclose in all advertisements and flyers that they are licensed agents representing the seller and, prior to crying the auction, announce that they are licensed real estate agents representing the seller.

a. Disclosure under this rule only applies to the day of the auction.

b. If the licensee provides brokerage services prior to the auction, the disclosure would need to be made either orally or in writing prior to or at the time of specific assistance being provided.

1.37(12) The licensee shall retain a copy of the disclosure form signed by the prospective buyer, lessee, seller, or lessor.

a. If an offer is accepted, the signed or noted copy shall be retained by the broker in the closed transaction file for a period of five years from the date of the signature or note.

b. If the offer is not accepted, a signed and noted copy shall be retained with the rejected offer for a period of five years.

1.37(13) Failure of a licensee to comply with this rule is prima facie evidence of a violation of Iowa Code subsection 543B.34(4).

1.37(14) Failure of a licensee to act consistent with disclosure representations made pursuant to this rule is prima facie evidence of a violation of Iowa Code subsection 543B.34(4).

1.37(15) Nothing in this rule shall affect the validity of title to real property transferred based solely on the reason that any licensee failed to conform to the provisions of this rule.

193E—1.38(543B) Trust account audit requirement. Rescinded IAB 3/1/95, effective 4/5/95.

193E—1.39(543B) Property condition disclosure requirement. The requirements of this rule shall apply to transfers of real estate subject to Iowa Code chapter 558A. For purposes of this rule, “transfer” means the transfer or conveyance of real estate by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, including rental or lease agreements which contain any option to purchase, if the property includes at least one but no more than four dwelling units unless the transfer is exempted by Iowa Code section 558A.1(4).

1.39(1) Additional disclosure. Nothing in this rule is intended to prevent any additional disclosure or to relieve the parties or agents in the transaction from making any disclosure otherwise required by law or contract.

1.39(2) Licensee responsibilities to seller. At the time a licensee obtains a listing, the listing licensee shall obtain a completed disclosure signed and dated by each seller represented by the licensee.

a. A licensee representing a seller shall deliver the executed statement to a potential buyer, a potential buyer’s agent, or any other third party who may be representing a potential buyer, prior to the seller’s making a written offer to sell or the seller’s accepting a written offer to buy.

b. The licensee representing a seller shall attempt to obtain the buyer's signature and date of signature on the statement and shall provide the seller and the buyer with fully executed copies of the disclosure and maintain a copy of the written acknowledgment in the transaction file. If the licensee is unable to obtain the buyer's signature, the licensee shall obtain other documentation establishing delivery of the disclosure and maintain the written documentation in the transaction file.

c. If the transaction closes, the listing broker shall maintain the completed disclosure statement for a minimum of five years.

d. The executed disclosure statement shall be delivered to the buyer(s) by either personal delivery or by certified or registered mail. If there is more than one buyer, any one buyer may accept delivery of the executed statement.

1.39(3) *Licensee responsibilities to buyer.* A licensee representing a buyer in a transfer shall notify the buyer of the seller's obligation to deliver the property disclosure statement.

a. If the disclosure statement is not delivered when required, the licensee shall notify the buyer that the buyer may revoke or withdraw the offer.

b. If a buyer elects to revoke or withdraw the offer, the licensee shall obtain a written revocation or withdrawal from the buyer and shall deliver the revocation or withdrawal to the seller within three days following personal delivery or five days following delivery of the disclosure by mail to the buyer.

c. Following revocation or withdrawal, any earnest money deposit shall be disbursed pursuant to 1.27(7), last paragraph.

1.39(4) *Inclusion of written reports.* A written report may be included in a disclosure statement which contains a report or opinion prepared by a person qualified to render the report or opinion. A report may be prepared by, but not limited to, the following persons provided that the content of the report or opinion is within the specified area of expertise of the provider: a land surveyor licensed pursuant to Iowa Code chapter 542B; a geologist; a structural pest control operator licensed pursuant to Iowa Code section 206.6; or a qualified building contractor.

a. The seller must identify the required disclosure items which are to be satisfied by the report.

b. If the report is prepared for the specific purpose of satisfying the disclosure requirement, the preparer of the report shall specifically identify the items of the disclosure which the report is intended to satisfy.

c. A licensee representing a seller shall provide the seller with information on the proper use of reports if reports are used as part of the disclosure statement.

1.39(5) *Amended disclosure requirements.* A licensee's obligations with respect to any amended disclosure statement are the same as the licensee's obligations with respect to the original disclosure. A disclosure statement must be amended if information disclosed is or becomes inaccurate or misleading, or is supplemented unless one of the following exceptions applies:

a. The information disclosed in conformance with Iowa Code chapter 558A is subsequently rendered inaccurate as a result of an act, occurrence, or agreement subsequent to the delivery of the disclosure statement.

b. The information is based on information of a public agency, including the state, a political subdivision of the state, or the United States.

1.39(6) *Minimum disclosure statement contents for all transfers.* All property disclosure statements, whether or not a licensee assists in the transaction, are required to disclose at a minimum the information required by the following sample statement. No particular language is required in the disclosure statement provided that the required disclosure items are included and the disclosure complies with Iowa Code chapter 558A. To assist real estate licensees and the public, the commission recommends use of the following sample language:

RESIDENTIAL PROPERTY SELLER DISCLOSURE STATEMENT

Property
Address: _____

PURPOSE:
Use this statement to disclose information as required by Iowa Code chapter 558A. This law requires certain sellers of residential property that includes at least one and no more than four dwelling units to disclose information about the property to be sold. The following disclosures are made by the seller(s) and not by any agent acting on behalf of the seller(s).

- INSTRUCTIONS TO SELLER(S):**
- 1. Seller(s) must complete this statement. Respond to all questions, or attach reports allowed by Iowa Code section 558A.4(2);
 - 2. Disclose all known conditions materially affecting this property;
 - 3. If an item does not apply to this property, indicate it is not applicable (N/A);
 - 4. Please provide information in good faith and make a reasonable effort to ascertain the required information. If the required information is **unknown** or is **unavailable** following a reasonable effort, use an **approximation** of the information, or indicate that the information is **unknown (UNK)**. All **approximations** must be identified as **approximations (AP)**.
 - 5. Additional pages may be attached as needed;
 - 6. Keep a copy of this statement with your other important papers.

1. Basement/Foundation: Any known water or other problems?	Yes []	No []
2. Roof: Any known problems?	Yes []	No []
Any known repairs?	Yes []	No []
If yes, date of repairs/replacement:	_____/_____/_____	
3. Well and Pump: Any known problems?	Yes []	No []
Any known repairs?	Yes []	No []
If yes, date of repairs/replacement:	_____/_____/_____	
Any known water tests?	Yes []	No []
If yes, date of last report:	_____/_____/_____	
and results:	_____	
4. Septic Tanks/Drain Fields: Any known problems?	Yes []	No []
Location of Tank:	_____	
Date tank last cleaned:	_____/_____/_____	

5. Sewer System: Any known problems? Yes [] No []
Any known repairs? Yes [] No []
If yes, date of repairs/replacement: _____/_____/_____
6. Heating System(s): Any known problems? Yes [] No []
Any known repairs? Yes [] No []
If yes, date of repairs/replacement: _____/_____/_____
7. Central Cooling System(s): Any known problems? Yes [] No []
Any known repairs? Yes [] No []
If yes, date of repairs/replacement: _____/_____/_____
8. Plumbing System(s): Any known problems? Yes [] No []
Any known repairs? Yes [] No []
If yes, date of repairs/replacement: _____/_____/_____
9. Electrical System(s): Any known problems? Yes [] No []
Any known repairs? Yes [] No []
If yes, date of repairs/replacement: _____/_____/_____
10. Pest Infestation (e.g., termites, carpenter ants):
Any known problems? Yes [] No []
If yes, date(s) of treatment: _____/_____/_____
Any known structural damage? Yes [] No []
If yes, date(s) of repairs/replacement: _____/_____/_____
11. Asbestos: Any known to be present in the structure? Yes [] No []
If yes, explain: _____
12. Radon: Any known tests for the presence of radon gas? Yes [] No []
If yes, date of last report: _____/_____/_____
and results: _____
13. Lead-Based Paint: Any known to be present in the structure? Yes [] No []
14. Flood Plain: Do you know if the property is located in a flood plain? Yes [] No []
If yes, what is the flood plain designation: _____
15. Zoning: Do you know the zoning classification of the property? Yes [] No []
If yes, what is the zoning classification: _____

16. Shared or Co-Owned Features: Any features of the property known to be shared in common with adjoining landowners, such as walls, fences, roads, and driveways whose use or maintenance responsibility may have an effect on the property? Yes [] No []

Any known “common areas” such as pools, tennis courts, walkways, or other areas co-owned with others, or a Homeowner’s Association which has any authority over the property? Yes [] No []

17. Physical Problems: Any known settling, flooding, drainage or grading problems? Yes [] No []

18. Structural Damage: Any known structural damage? Yes [] No []

19. Is the property located in a real estate improvement district? Yes [] No []

If yes, indicate the amount of any special assessment against the property: \$_____

You **MUST** explain any “YES” response(s) above. Use the back of this statement or additional sheets as necessary: _____

SELLER(S) DISCLOSURE:

Seller(s) discloses the information regarding this property based on information known or reasonably available to the Seller(s).

The Seller(s) has owned the property since ____/____/____. The Seller(s) certifies that as of the date signed this information is true and accurate to the best of my/our knowledge.

Seller _____ Seller _____
Date ____/____/____ Date ____/____/____

BUYER(S) ACKNOWLEDGMENT:

Buyer(s) acknowledges receipt of a copy of this Real Estate Disclosure Statement. This statement is not intended to be a warranty or to substitute for any inspection the buyer(s) may wish to obtain.

Buyer _____ Buyer _____
Date ____/____/____ Date ____/____/____

193E—1.40(543B) Disclosure of licensee interest, acting as a principal, and status as a licensee required. A licensee shall not act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family, including but not limited to a spouse, parent, child, grandparent, grandchild, brother, or sister, or on behalf of the brokerage, or on behalf of an organization or business entity in which the licensee has an interest, including an affiliated business arrangement as defined in subrule 1.50(1), unless the licensee provides written disclosure of that interest to all parties to the transaction. Disclosure required under this rule must be made at the time of or prior to the licensee's providing specific assistance to the party or parties to the transaction. Copies of the disclosure may be provided in person or by mail, as soon as reasonably practical. If no specific assistance is provided, disclosure shall be provided prior to the parties' forming a legally binding contract, either prior to an offer being made by the buyer or tenant or prior to an acceptance by the seller or landlord, whichever comes first.

1.40(1) *Licensee acting as a principal.* A licensee shall not acquire any interest in any property directly or indirectly nor shall the licensee sell any interest in which the licensee directly or indirectly has an interest without first making written disclosure of the licensee's true position clear to the other party. Satisfactory proof of this fact must be produced by the licensee upon request of the commission. Whenever a licensee is in doubt as to whether an interest, relationship, association, or affiliation requires disclosure under this rule, the safest course of action is to make the written disclosure.

1.40(2) *Status as a licensee.* Before buying, selling, or leasing real estate as described above, the licensee shall disclose in writing any ownership, or other interest, which the licensee has or will have and the licensee's status to all parties to the transaction. An inactive status license shall not exempt a licensee from providing the required disclosure.

1.40(3) *Dual capacity.* The licensee shall not act in a dual capacity of agent and undisclosed principal in any transaction.

193E—1.41(543B) Relationship between licensees and the public. Rescinded IAB 9/10/97, effective 10/15/97.

193E—1.42(543B) Brokerage agreements. All brokerage agreements shall be written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson shall not take or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.

1.42(1) Every written brokerage agreement shall include, at a minimum, the requirements set forth in Iowa Code Supplement section 543B.57 and the following provisions:

a. A statement disclosing the brokerage policy on cooperating with and compensating other brokerages whether the brokerage is acting as subagent or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to share the compensation with other brokerages. Such disclosure shall serve to inform the client of any policy that would limit the participation of any other brokerage;

b. All listing contracts and all brokerage agency contracts shall comply with Iowa real estate law and commission rules including, but not limited to, 193E—1.23(543B) Listings, 1.30(543B) Property management, and 1.20(543B) Terms and conditions.

1.42(2) No licensee shall make or enter into a brokerage agreement that specifies a net sale, lease, rental, or exchange price to be received by an owner and the excess to be received by the licensee as a commission.

1.42(3) The taking of a net brokerage agreement shall be unprofessional conduct and a practice that is harmful or detrimental to the public and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

1.42(4) Duration of relationship. The relationships shall commence at the time of the brokerage agreement and shall continue until closing of the transaction or performance or completion of the agreement by which the broker was engaged within the term of the agreement. If the transaction does not close, or the agreement for which the broker was engaged is not performed or completed for any reason, the relationship shall end at the earlier of the following:

- a. Any date of expiration agreed upon by the parties;
- b. Any termination by written agreement of the parties.

1.42(5) Obligation terminated. In addition to any continuing duty or obligation provided in the written agreement or pursuant to Iowa law and commission rules, a broker or brokerage engaged as a seller's or landlord's agent, buyer's or tenant's agent, subagent, or dual agent and affiliated licensees shall have the duty after termination, expiration, completion, or performance of the brokerage agreement, to:

- a. Account for all moneys and property related to and received during the engagement; and
- b. Keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party or is otherwise confidential by statute or rule.

1.42(6) Compensation. In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

a. Payment of compensation shall not be construed to determine or establish an agency relationship. The payment of compensation to a broker does not determine whether a brokerage relationship has been created between any broker and a seller, landlord, buyer, or tenant paying such compensation.

b. Written permission of the client is required as follows:

(1) A seller's or landlord's agent may share the commission or other compensation paid by such seller or landlord with another broker, with the written consent of the seller or landlord.

(2) A buyer's or tenant's agent may share the commission or other compensation paid by such buyer or tenant with another broker, with the written consent of the buyer or tenant.

(3) Without the written approval of the client, a seller's or landlord's agent shall not propose to the buyer's or tenant's agent, that such seller's or landlord's agent may be compensated by sharing compensation paid by such buyer or tenant.

(4) Without the written approval of the client, a buyer's or tenant's agent shall not propose to the seller's or landlord's agent, that such buyer's or tenant's agent may be compensated by sharing compensation paid by such seller or landlord.

c. A broker may be compensated by more than one party for services in a transaction, if the parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, lease, or exchange.

d. A licensee shall not accept, receive or charge an undisclosed commission for a transaction.

e. A licensee shall not give or pay an undisclosed commission to any other licensee for a transaction, except payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service.

f. A licensee shall not pay any undisclosed rebate to any party to a transaction.

g. A licensee shall not give any undisclosed credit against commission due from a client or licensee to any party to a transaction.

h. A licensee shall not accept, receive or charge any undisclosed payments for any services provided by any third party to any party to a transaction including, but not limited to, payments for procuring insurance or for conducting a property inspection related to the transaction.

1.42(7) Solicitation of brokerage agreements. A licensee shall not advise, counsel, or solicit a brokerage agreement from a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer or landlord or tenant has contracted with another broker for the same brokerage services on an exclusive basis.

a. This rule does not preclude a broker from entering into a brokerage agreement with a seller or buyer, or landlord or tenant, when the initial contact is initiated by the seller or buyer, or landlord or tenant, and the licensee has not directly or indirectly solicited the discussion, provided the brokerage agreement does not become effective until the expiration or release of the current brokerage agreement.

b. A brokerage agreement may not be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement.

1.42(8) A licensee shall not negotiate directly or indirectly with a seller or buyer, or landlord or tenant, if the licensee knows, or acting in a reasonable manner should have known, that the seller or buyer, or landlord or tenant, has a written unexpired brokerage agreement for services on an exclusive basis.

1.42(9) A licensee shall not refuse to permit a customer to have a customer's agent present at any step in a real estate transaction including, but not limited to, viewing a property, seeking information about a property, or negotiating directly or indirectly with a licensee about a property listed by such licensee; and no licensee shall refuse to show a property listed by that licensee or otherwise deal with a customer who is represented by another licensee or who requests that the customer's agent be present at any step in the real estate transaction; provided, however, a listing licensee shall not be required to permit a customer's agent to be present when presenting offers or discussing confidential matters with a client. Compliance with this subrule does not require or obligate a listing licensee to share any commission or to otherwise compensate a customer's agent.

193E—1.43(543B) Single agent representing a seller or landlord.

1.43(1) *Duty to seller or landlord.* A licensee representing a seller or landlord as an exclusive seller's agent or an exclusive landlord's agent shall have the following duties and obligations:

a. To perform the terms of the written agreement made with the seller or landlord;

b. To exercise reasonable skill and care for the seller or landlord;

c. To promote the interests of the seller or landlord with the utmost care, integrity, honesty, and loyalty, including but not limited to the following:

(1) Seeking a price and terms which are acceptable to the seller or landlord; except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(2) Presenting all written offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease, unless it is provided for by the brokerage agreement;

(3) Disclosing to the seller or landlord all material adverse facts concerning the property and the transaction that are actually known by the licensee pursuant to Iowa Code Supplement section 543B.56;

(4) Advising the client to obtain expert advice as to material matters about which the licensee knows, but the specifics of which are beyond the expertise of the licensee;

(5) Preserving the seller's or landlord's confidential information as defined in 193E—1.1(543B), unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing, including but not limited to the following:

1. Information concerning the seller or the landlord that, if disclosed to the other party, could place the seller or landlord at a disadvantage when bargaining;

2. That the seller or landlord is willing to accept less than the asking price or lease price for the property;

3. What the motivating factors are for the client's selling or leasing the property;

4. That the seller or landlord will agree to sale, lease, or financing terms other than those offered;

5. The seller's or landlord's real estate needs;

6. The seller's or landlord's financial information;

(6) Accounting in a timely manner for all money and property received;

(7) Providing brokerage services to all parties to the transaction honestly and in good faith;

(8) Complying with all requirements of Iowa Code chapter 543B and all commission rules and regulations;

(9) Complying with any applicable federal, state, or local laws, rules, ordinances, including fair housing and civil rights statutes and regulations.

1.43(2) *Duty to a buyer or tenant.* A licensee acting as an exclusive seller's or exclusive landlord's agent shall disclose to any customer all material adverse facts actually known by the licensee pursuant to Iowa Code Supplement section 543B.56.

a. The licensee owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the seller or landlord or any independent inspector, unless the licensee knows or has reason to believe the information is not accurate.

b. Nothing in this rule precludes the obligation of a buyer or tenant from the responsibility of protecting the buyer's or the tenant's own interest by, but not limited to, inspecting the physical condition of the property and verifying important information.

c. A seller or landlord may agree in writing with an exclusive seller's or exclusive landlord's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the seller's or landlord's behalf shall be an agent with the same obligations and responsibilities to the seller or landlord as the primary broker of the seller or landlord.

d. A real estate brokerage engaged by a seller or landlord in a real estate transaction may provide assistance to an unrepresented buyer or tenant by performing such acts as preparing offers and conveying those offers to the seller or landlord and providing information and assistance concerning professional services not related to real estate brokerage services.

1.43(3) *Alternative properties.* The licensee may show alternative properties not owned by the seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord.

193E—1.44(543B) Single agent representing a buyer or tenant.

1.44(1) *Duty to buyer or tenant.* A licensee representing a buyer or tenant as an exclusive buyer's or an exclusive tenant's agent shall have the following duties and obligations:

- a.* To perform the terms of any written agreement made with the client;
- b.* To exercise reasonable skill and care for the client;
- c.* To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including but not limited to the following:

(1) Seeking a property at a price and terms which are acceptable to the buyer or tenant, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property, or to a lease or letter of intent to lease, unless it is provided for by the brokerage agreement;

(2) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or letter of intent to lease;

(3) Disclosing to the buyer or tenant material adverse facts concerning the property and the transaction that are actually known by the licensee, pursuant to Iowa Code Supplement section 543B.56;

(4) Advising the buyer or tenant to obtain expert advice on material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(5) Preserving the buyer's or tenant's confidential information as defined in 193E—1.1(543B), unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing, including but not limited to the following:

1. Information concerning the buyer or the tenant that if disclosed to the other party, could place the client at a disadvantage when bargaining;

2. That the buyer or tenant is willing to pay more than the asking price or lease price for the property;

3. What the motivating factors are for the party buying or leasing the property;

4. That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;

5. The buyer's or tenant's real estate needs;

6. The buyer's or tenant's financial qualifications;

(6) Accounting in a timely manner for all money and property received;

(7) Providing brokerage services to all parties to the transaction honestly and in good faith;

(8) Complying with all requirements of Iowa Code chapter 543B and all commission rules and regulations;

(9) Complying with any applicable federal, state, or local laws, rules, ordinances, including fair housing and civil rights statutes and regulations.

1.44(2) *Duty to a seller or landlord.* A licensee acting as an exclusive buyer's or an exclusive tenant's agent shall disclose to any customer all material adverse facts actually known by the licensee, pursuant to Iowa Code Supplement section 543B.56.

a. The licensee owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to verify the accuracy or completeness of any statement made by the buyer or tenant or any independent source, unless the licensee knows or has reason to believe the information is not accurate.

b. Nothing in this rule shall limit the obligation of a seller or landlord from the responsibility of protecting their own interest by, but not limited to, verifying information concerning or provided by the buyer or tenant.

c. A buyer or tenant may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained or compensated as subagents, and any broker acting as a subagent on the buyer's or tenant's behalf shall be a single agent with the same obligations and responsibilities to the buyer or tenant as the primary broker of the buyer or tenant.

d. A real estate brokerage agency engaged by a buyer or tenant in a real estate transaction may provide assistance to an unrepresented seller or landlord by performing such acts as preparing offers and conveying those offers to the buyer or tenant and providing information and assistance concerning professional services not related to real estate brokerage services.

1.44(3) *Competing buyers or tenants.* The licensee may show properties in which the buyer or tenant is interested to other prospective buyers or tenants, may assist other competing buyers or tenants, and may enter into brokerage service agreements with other competing buyers or tenants without breaching any duty or obligation to the buyer or tenant.

193E—1.45(543B) Disclosed dual agent.

1.45(1) A brokerage which has a company policy that permits disclosed dual agency for in-house transactions shall provide a disclosed dual agency consent agreement to the client, or prospective client prior to engaging in any activities of a dual agent. Such consent agreement shall comply with Iowa law and commission rules including, but not limited to, the requirement to inform the prospective clients that they are not required to consent to dual agency representation as provided by subrule 1.45(2).

a. A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a written agreement pursuant to Iowa law and commission rules.

b. A dual agent shall be an agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required for a single agent representing a seller or landlord and for a single agent representing a buyer or tenant, unless otherwise provided for in this rule.

c. A dual agent shall disclose to the client all material adverse facts concerning the property that are actually known by the licensee, pursuant to Iowa Code Supplement section 543B.56.

d. A dual agent shall not disclose to one client confidential information about the other client and shall preserve a seller's or a landlord's, or a buyer's or a tenant's, confidential information as defined in 193E—1.1(543B), unless disclosure is required by law, or failure to disclose such information would constitute fraud or dishonest dealing, or disclosure is authorized by express instruction. A dual agent does not terminate the dual agency relationship by making the disclosures required or permitted by the dual agency consent agreement. Confidential information shall include, but not be limited to, the following:

(1) Information concerning a seller or landlord that if disclosed to the buyer or tenant could place that seller or landlord at a disadvantage when bargaining;

(2) Information concerning a buyer or tenant that if disclosed to the seller or landlord could place that buyer or tenant at a disadvantage when bargaining;

(3) That the seller or landlord is willing to accept less than the asking price or lease price for the property;

(4) That the buyer or tenant is willing to pay more than the asking price or lease price for the property;

(5) What the motivating factors are for client's selling or leasing the property;

(6) What the motivating factors are for the client's buying or leasing the property;

(7) That the seller or landlord will agree to sale, lease, or financing terms other than those offered;

(8) That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;

- (9) The seller's or landlord's real estate needs;
- (10) The buyer's or tenant's real estate needs;
- (11) The seller's or landlord's financial information;
- (12) The buyer's or tenant's financial qualifications.

e. In any transaction, a licensee may withdraw from representing a client who has not consented to a disclosed dual agency at any time prior to the existence of the dual agency, which is prior to discussing any seller's or landlord's property with a potential buyer or tenant and prior to discussing any potential buyer or tenant with a seller or landlord, when both the seller or landlord and the buyer or tenant are represented by and clients of the licensee. All withdrawals shall be made in writing and acknowledged by the separate signatures of the clients. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction, nor limit the licensee from representing the client in other transactions not involving a dual agency.

1.45(2) A dual agency consent agreement shall:

- a.* Fairly and accurately describe the type of representation the licensee will provide each client;
- b.* Contain a statement of the licensee's duties under Iowa Code Supplement section 543B.56, subsection 1;
- c.* Contain a statement of the licensee's duties under Iowa Code Supplement section 543B.56, subsection 2;
- d.* Inform the clients that representing more than one party to a transaction may present a conflict of interest;
- e.* Inform the clients that they are not required to consent to dual agency;
- f.* Provide additional information the licensee determines is necessary to clarify the licensee's relationship with each client, including any changes from prior types of representation;
- g.* Describe the confidential information a dual agent will not disclose to one client about the other client; and
- h.* Include a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

1.45(3) No particular disclosure language is required. The commission recommends use of the following sample language to satisfy the required disclosure regarding conflict of interest: Representing more than one party to a transaction can create a conflict of interest since both clients may rely upon the broker's advice, and the clients' respective interests may be adverse to each other. Broker will endeavor to be impartial between seller and buyer and will not represent the interest of either the seller or buyer to the exclusion or detriment of the other.

1.45(4) Potential dual agency agreement. A brokerage which has a company policy that permits disclosed dual agency for in-house transactions that elects to use a potential dual agency agreement shall provide the agreement to the client or prospective client prior to engaging in any activities of a dual agent. Such consent agreement shall comply with Iowa law and commission rules.

- a.* The potential dual agency agreement should be provided to the seller or landlord prior to entering into a listing agreement, or a contract for seller or landlord brokerage services.
- b.* The potential dual agency agreement should be provided to the buyer or tenant prior to entering into a buyer or tenant agency agreement, or a contract for buyer or tenant brokerage services.
- c.* If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure shall be presented to the buyer or tenant prior to signing an offer to purchase or a rental or lease agreement. The buyer or tenant may accept or reject dual agency at this point in the transaction.

d. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, a dual agency consent disclosure shall be presented to the seller or landlord prior to signing or accepting an offer to purchase or a rental or lease agreement. The seller or landlord may accept or reject dual agency at this point in the transaction.

e. If the parties to a proposed transaction or contract have agreed in writing to potential dual agency, the required subsequent dual agency consent disclosure shall be property specific and comply with Iowa law and commission rules.

193E—1.46(543B) Appointed agents within a brokerage. Iowa Code Supplement section 543B.59 authorizes a designated broker to elect to appoint in writing one or more different licensees affiliated with the broker to act as agent to represent exclusively different clients in the same transaction, to the exclusion of all other affiliated licensees within the real estate brokerage. The licensees may not disclose, except to the licensee's designated broker, information made confidential by request or instructions of the client the licensee is representing or otherwise confidential by statute or rule, except information allowed by this chapter or required to be disclosed by law.

1.46(1) The designated broker may want to make some or all of those appointments in the written company policy and may want to include the procedure by which the appointment of the agency is made.

1.46(2) The designated broker could decide that since both seller and buyer, or landlord and tenant, brokerage relationships are being offered to consumers by the broker's company, that only the affiliated licensee who, on behalf of the designated broker, entered into the listing agreement with the seller, or leasing agreement with the landlord, will represent the seller, or landlord, as that client's agent. In that scenario all other affiliated licensees with the designated broker will represent buyers, or tenants, as their agents in any transactions dealing with the subject property; and only the affiliated licensee who, on behalf of the designated broker, entered into a brokerage agreement with the buyer, or tenant, will represent the buyer, or tenant, as that client's agent. In that scenario all other affiliated licensees with the designated broker will represent sellers, or landlords, as their agents in any transactions dealing with the subject property.

193E—1.47 (543B) Appointed agent procedures and disclosure.

1.47(1) Prior to entering into a brokerage agreement, a real estate brokerage shall notify a client in writing of the real estate brokerage's appointed agent policy and those affiliated licensees within the real estate brokerage that will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage. The appointed agent disclosure shall include, at a minimum, the following provisions:

- a.* The name of the appointed agent(s);
- b.* A statement that the appointed agent will be representing the client as the client's agent and will owe the client duties as set forth in Iowa Code Supplement section 543B.56, subsections 1 and 2;
- c.* A statement that the brokerage may be representing both the seller and the buyer in connection with the sale or purchase of real estate;
- d.* A statement that other affiliated licensees may be appointed during the term of the brokerage agreement should the appointed agent not be able to fulfill the terms of the brokerage agreement or as by agreement between the designated broker and the client. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any of the duties owed to the client. At any time of the appointment of the new or additional agents, the designated broker must comply with the provisions of this rule; and
- e.* A provision for the client to consent or not consent in writing to the appointment.

1.47(2) Implementation of the appointed agent within a brokerage relationship. Any broker may elect to offer the appointed agent relationship. The broker shall not implement the use of the relationship until such time as the broker has fully complied with all Iowa laws and commission rules.

a. The broker shall not, without the written consent of the clients, appoint an affiliated licensee to act as an appointed agent in any transaction involving a written exclusive single agent or dual agent brokerage agreement that was in effect prior to the broker implementing the appointed agent relationship.

b. If the client of an appointed agent wants to consider a property on which the broker has a prior existing exclusive single agent or dual agent brokerage agreement, the broker shall not allow the use of the appointed agent without first obtaining the written consent of that particular seller or landlord to the appointed agency relationship.

c. If the written consent of the client to allow the appointed agency relationship is not given or cannot be obtained, the broker shall refer the client of the appointed agent to another broker for representation at least for the purpose of considering this property.

1.47(3) A designated broker shall not be considered to be a dual agent solely because the designated broker makes an appointment under this rule, except that any licensee who, with prior written consent of all parties, personally represents both the seller and buyer or both the landlord and tenant in a transaction shall be a dual agent and shall be required to comply with the provisions governing dual agents.

1.47(4) Appointed agent and designated broker responsibilities.

a. A designated broker appointing an affiliated licensee(s) to act as an agent of a client shall take ordinary and necessary care to protect confidential information disclosed by the client to the appointed agent.

b. An appointed agent may disclose to the brokerage's designated broker, or a designee specified by the designated broker, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction, or to comply with the broker's supervisory duties. Confidential information shall be treated as such by the designated broker or other specified representative of the broker and shall not be disclosed unless otherwise required by Iowa law and related commission rules or requested or permitted in writing by the client who originally disclosed the confidential information.

c. If a designated broker elects to use the appointed agent within a firm authority set forth in Iowa Code Supplement section 543B.59, and when the affiliated licensee appointed also acts in a supervisory capacity under the designated broker, such as branch managers, sales managers and the like, these appointed licensees may be treated in the same manner as the designated broker for purposes of determining dual agency under Iowa Code Supplement section 543B.59, subsection 2, only if the designated broker authorizes and provides for such supervisory positions in the written company policy.

(1) A designated broker may elect to authorize and appoint an affiliate licensee in a supervisory capacity to supervise and assist licensees appointed to exclusively represent a seller or landlord, or buyer or tenant in a transaction.

(2) A designated broker may elect to authorize and appoint an affiliate licensee in a supervisory capacity to supervise and assist licensees appointed to exclusively represent a buyer or tenant in a transaction.

(3) A designated broker may elect to authorize and appoint an affiliate licensee in a supervisory capacity to supervise and assist licensees appointed to exclusively represent a seller or landlord in a transaction.

(4) A licensee in a supervisory capacity that is authorized and appointed to supervise and assist licensees appointed to represent a seller or landlord, or buyer or tenant exclusively, shall have the same duties, obligations, and responsibilities as the designated broker.

(5) The use of an authorized appointed agent shall not relieve the designated broker of duties, obligations, and responsibilities required by law or rules.

1.47(5) Licensee's duty to designated broker/designee. A licensee shall keep the brokerage designated broker/designee fully informed of all activities conducted on behalf of the brokerage and shall notify the designated broker/designee of any other activities that might impact on the responsibility of the designated broker/designee.

193E—1.48(543B) Written company policy required. The designated broker, firm, partnership, limited liability company, association, or corporation acting as a broker shall have a written company policy that identifies and describes the types of real estate brokerage relationships in which the broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as a part of any real estate brokerage activities. In addition, those brokerages that offer representation to both buyers and sellers and tenants and landlords must also address the appointed agent's policy and brokerage procedures intended to prevent any mishandling of information through both formal and informal sharing of information within the brokerage, the arrangement of brokerage office space and the personal relationships of affiliated licensees who are representing clients with adverse interests.

1. A broker shall not be required to offer or engage in more than one type of brokerage relationship as enumerated in rules 1.43(543B) to 1.46(543B).

2. The licensee offering brokerage services to a person, or who is providing brokerage services to a person for a property, shall disclose in writing to that person the type or types of brokerage relationships the broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing.

3. Disclosure pursuant to this rule shall be made by the licensee at the earliest practicable opportunity at the time specific assistance is provided to a seller, buyer, landlord, or tenant who is not represented by a licensee.

193E—1.49(543B) Disclosure of agency relationship required. Rescinded IAB 9/10/97, effective 10/15/97.

193E—1.50(543B) Financial interest written disclosure required. A licensee must disclose to a client any financial interests the licensee or brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction. A licensee who has any affiliated business arrangement or relationship with any provider of settlement services, as defined below, and directly or indirectly refers business to that provider or affirmatively influences the selection of that provider, shall disclose the arrangement and any financial interest to the person whose business is being referred or influenced. The required disclosure shall be acknowledged by the separate signatures of the person or persons whose business is being referred or influenced. The disclosure shall be given and signed before or at substantially the same time that the business is referred or the provider is selected. If the disclosure is made on a separate form, the licensee shall retain a copy of the signed disclosure in the transaction file for a period of five years after the execution.

1.50(1) An affiliated business arrangement shall mean an arrangement in which a real estate agent licensee, or an associate of a real estate licensee, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in the business entity providing the service or product.

a. An associate means one who has one or more of the following relationships with a real estate broker:

- (1) A spouse, parent, or child of a real estate licensee;
- (2) A corporation or business entity that controls, is controlled by or is under common control with a real estate licensee;
- (3) An employee, officer, director, partner, franchiser or franchisee of a real estate licensee; or
- (4) Anyone who has an agreement, arrangement or understanding with a real estate licensee or brokerage, the purpose or substantial effect of which is to enable the real estate licensee to refer for any service, settlement service, or business or product related to the transaction and to benefit financially from the referral of that business.

b. Settlement services include services in connection with a real estate transaction including, but not limited to, the following: mortgage or other financing; title searches; title examinations; the provisions of title certificates, title insurance, hazard insurance; services rendered by an attorney; the preparation of documents; property surveys; the rendering of credit reports or appraisals; pest, fungus, mechanical or other inspections; services rendered by a real estate agent or broker; and the handling of the processing and closing of settlement.

c. An affiliated business arrangement shall not include an arrangement in which a real estate licensee, or an associate of a real estate licensee, gives or pays an undisclosed commission in a transaction to any other licensee for a referral to provide real estate brokerage services, including franchise affiliates, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service. Referral fees or commissions paid by a licensee to another licensee under these conditions are exempted from the disclosure requirement.

1.50(2) No particular language is required for the disclosure. To assist real estate licensees and the public, the commission recommends the following sample language:

DISCLOSURE OF REFERRAL OF BUSINESS

I understand that (Name of Real Estate Licensee) has an affiliate relationship with or owns an interest in (Name of Company to Which Business Is Being Referred) and is also recommending that I employ this company for (Type of Service).

I understand that (Name of Real Estate Licensee) may earn financial benefits from my use of this company.

I understand that I am not obligated to use this company, and may select a different company if I wish to do so.

This form has been fully explained to me and I have received a copy.

(Date)

(Signature of Person Whose Business
is Being Referred)

1.50(3) The affiliate disclosure required under this rule shall be satisfied if the licensee delivers the disclosure form required by 24 CFR Chapter XX, Section 3500.15(b)(1) of the Real Estate Settlement Procedures Act as of April 1995. Licensees are cautioned that federal regulations may require additional or different disclosures than are established by this rule, and may prohibit certain referral fees.

1.50(4) The term “*franchise*” shall have the same meaning as set forth in 24 CFR Chapter XX, Section 3500.15(c) as of April 1995.

1.50(5) The term “*affiliate relationship*” means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

1.50(6) The term “*beneficial ownership*” means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person’s name.

1.50(7) The term “*direct ownership*” means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

1.50(8) The term “*control*” as used in the definition of “*affiliate relationship*” means that a person:

- a.* Is a general partner, officer, director, or employer of another person;
- b.* Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;
- c.* Affirmatively influences in any manner the election of a majority of the directors of another person; or
- d.* Has contributed more than 20 percent of the capital of the other person.

193E—1.51(543B) Agency-designated broker responsibilities. The following conditions and circumstances, together with the education and experience of licensed and unlicensed employees and independent contractors, shall be considered when determining whether or not the designated broker has met the supervisory responsibilities as set forth by Iowa Code Supplement section 543B.62, subsection 3, paragraph “b.”

1.51(1) When making a determination, the commission may consider, but is not limited to, the following:

- a.* Availability of the designated broker/designee to assist and advise regarding brokerage related activities;
- b.* General knowledge of brokerage-related staff activities;
- c.* Availability of quality training programs and materials to licensed and unlicensed employees and independent contractors;
- d.* Supervisory policies and practices in the review of competitive market analysis, listing contracts, sales contracts and other contracts or information prepared for clients and customers;
- e.* Frequency and content of staff meetings;
- f.* Written company policy manuals for licensed and unlicensed employees and independent contractors;
- g.* Ratio of supervisors to licensed employees and independent contractors; and
- h.* Assignment of an experienced licensee to work with new licensees.

1.51(2) The designated broker shall disseminate, in a timely manner, to licensed employees and independent contractors all regulatory information received by the brokerage pertaining to the practice of real estate brokerage.

193E—1.52(543B) Enforcement date. Rules 1.41(543B) to 1.51(543B) shall not be enforced until July 1, 1996. When the commission adopted these rules, which became effective January 24, 1996, it intended to delay enforcement until July 1, 1996, as stated in rule 1.41(543B). This rule is intended to clarify the enforcement date to avoid any possible confusion by licensees or the public more generally. The commission wants to provide licensees with the opportunity to obtain education and to become familiar with the rules prior to enforcement.

These rules are intended to implement Iowa Code chapters 558A and 543B and Iowa Code Supplement sections 543B.57 to 543B.63.

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